

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
ANDERSON DIVISION

John James Bell, # 192526, aka, Omar	)	C/A No.: 8:08-cv-304-GRA-BHH
Abdel-Al-Mumit,	)	
	)	
Petitioner,	)	
	)	
v.	)	ORDER
	)	(Written Opinion)
	)	
Warden, Kershaw Correctional	)	
Institution,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court for a review of the magistrate's Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), and Local Rule 73.02(B)(2)(c), D.S.C., filed on February 21, 2008. The petitioner originally brought this action pursuant to 28 U.S.C. § 2254 on January 30, 2008. The magistrate recommends dismissing this petition because the petitioner has not requested permission from the Fourth Circuit Court of Appeals to file a successive § 2254 petition.

Plaintiff brings this claim *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *See Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *See Boag v. MacDougall*, 454 U.S. 364, 365 (1982).

The magistrate makes only a recommendation to this Court. The

recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.* In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th Cir. 1983). Petitioner filed objections on February 27, 2008.

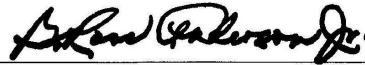
Petitioner objects that the magistrate erred by dismissing the immediate petition as successive because it is based on newly discovered evidence. Though the Fourth Circuit Court of Appeals may authorize a district court to consider a successive § 2254 petition containing newly discovered evidence, "In the absence of pre-filing authorization, the district court is without jurisdiction to entertain successive petition[s]." *Easter v. Johnson*, 107 Fed. Appx. 348, 2004 WL 1857999 at \*1 (4th Cir. Aug. 19, 2004)(citing *Evans v. Smith*, 220 F.3d 306, 325 (4th Cir. 2000)). Therefore, regardless of any newly discovered evidence the petition may contain, this Court cannot consider the petitioner's unauthorized, successive § 2254 petition.

After reviewing the magistrate's Report and Recommendation, relevant case

law, and the petitioner's objections, this Court finds that the Report and Recommendation applies sound legal principles to the facts of this case. Therefore, this Court adopts it in its entirety.

IT IS THEREFORE SO ORDERED THAT the petition be dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.  
UNITED STATES DISTRICT JUDGE

March 6, 2008  
Anderson, South Carolina

**NOTICE OF RIGHT TO APPEAL**

Pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure, Petitioner has the right to appeal this Order within thirty (30) days from the date of its entry. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, **will waive the right to appeal.**